

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Western Wireless Corp.)	
Petition for Agreement with Redefinition of)	
Service Areas of Certain Rural Incumbent)	
Local Exchange Carriers in the State of)	
Minnesota Pursuant to 47 C.F.R. § 54.207(c))	
)	

WESTERN WIRELESS REPLY COMMENTS

Western Wireless Corp. (“Western Wireless”) submits its reply to the comments filed in this proceeding by the Minnesota Independent Coalition (“MIC”) and TDS Telecommunications Corp. (“TDS”). ^{1/} Western Wireless respectfully submits that the Commission should decline to open a proceeding on this matter, since Western Wireless has demonstrated and the Minnesota Public Utilities Commission (“PUC”) has determined that the service area redefinitions at issue here are consistent with all existing precedents and Commission standards. Instead, the Commission should allow the Minnesota PUC decision to redefine service areas to take effect pursuant to 47 C.F.R. § 54.207(c).

1. Western Wireless showed that redefinition of the eight rural incumbent local exchange carrier (“ILEC”) service areas at issue here was

^{1/} See Public Notice, *The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Minnesota*, DA 04-3137, CC Docket No. 96-45 (released Sept. 29, 2004); Western Wireless Corp. Petition for Agreement with Redefinition of Service Areas of Certain Rural ILECs in the State of Minnesota, CC Docket No. 96-45 (filed Sept. 15, 2004) (“*Petition*”). MIC and TDS filed comments on Oct. 13, 2004.

consistent with the Commission’s “cream skimming” analysis in the *Virginia Cellular* and *Highland Cellular* decisions. ^{2/} Specifically, Western Wireless followed the same analytical method applied by the Commission to compare the population density per square mile for the wire centers in which it was seeking designation with that in the wire centers outside its requested designated service areas. The Minnesota PUC approved the redefinition based on this density analysis, as well as a Minnesota Department of Commerce (“DOC”) analysis assessing the ILECs’ costs of service, to conclude no cream skimming concerns were presented.

Unwilling to accept this precedent, TDS proposes to invent new ways to analyze “cream skimming” – based on access lines per square mile by wire center, and by Census Block Group. In other words, now that Western Wireless has passed the Commission’s test based on the existing measurement criteria, as well as the DOC’s more complete analysis of the ILECs’ costs, TDS tries to concoct new proxy metrics in order to flunk Western Wireless. The Commission should reject this sleight-of-hand and should accept the sensible, carefully considered decision of the Minnesota PUC.

2. The Commission should disregard MIC’s arguments based on the impact on the size of the high-cost fund of designating Western Wireless and other competitive eligible telecommunications carriers (“ETCs”). ^{3/} The impact on fund

^{2/} *Petition at 9-12; see Federal-State Joint Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2003) (“*Virginia Cellular*”); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 6422 (2004) (“*Highland Cellular*”).

^{3/} MIC Comments at 2-3.

size is relevant, if at all, only to a decision whether to designate a carrier as an additional ETC consistent with the public interest under 47 U.S.C. § 214(e)(2). The Minnesota PUC has already decided to designate Western Wireless as an ETC; that ETC designation decision is not subject to further review or reconsideration by the Commission. MIC's argument is irrelevant to the instant matter, which concerns service area redefinition. Moreover, as Western Wireless recently demonstrated, the growth of the fund is being driven primarily by increased funding to ILECs, not to competitive ETCs. Competitive ETCs receive only 7% of total high-cost funding and account for only 14% of the growth of the fund over the past 5 years. ^{4/}

3. MIC and TDS would like to make time stand still until the Joint Board and the Commission have finally resolved all pending proceedings relating to the high-cost support rules. ^{5/} But MIC and TDS ignore the fact that the Joint Board itself has strongly recommended against changing the “procedures established by the Commission in 1997 for redefinition of rural study areas.” ^{6/} Moreover, the only rules under which the Commission may lawfully operate today are those on the books today, regardless of the pendency of rulemakings that might – or might not – lead to any changes in those rules. The Commission has already rejected the same argument for stay of proceedings now recycled by MIC

^{4/} See Western Wireless Comments on Reform of the Rural High Cost Support System, CC Docket No. 96-45 (filed Oct. 15, 2004), at 7-8

^{5/} MIC Comments at 4-5 (arguing that this matter be stayed pending resolution of pending rulemakings relating to high-cost support); TDS Comments at 7-9 (same).

^{6/} See *Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4257, ¶ 55 (Joint Board 2004)

and TDS, and should do so again here. ^{7/} MIC and TDS may be accustomed to their monopoly status, but they cannot be allowed to use this obstructionist argument to preclude their consumers from receiving the benefits of competitive ETC entry.

For the foregoing reasons, and those in Western Wireless' initial *Petition*, the Commission should decline to open a proceeding on this matter and should allow the Minnesota PUC's service area redefinition decision to take effect.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

David L. Sieradzki

By: _____

Gene DeJordy,
Vice President, Regulatory Affairs
James H. Blundell,
Executive Director, External Affairs
Mark Rubin,
Director, Federal Government Affairs
WESTERN WIRELESS
CORPORATION
3650 131st Avenue SE, Suite 400
Bellevue, WA 98006
Telephone: (425) 586-8055

Michele C. Farquhar
David L. Sieradzki
HOGAN & HARTSON, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Telephone: (202) 637-5600

Mark J. Ayotte
BRIGGS AND MORGAN, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone: (651) 808-6600

ATTORNEYS FOR WESTERN
WIRELESS CORP.

October 27, 2004

^{7/} See, e.g., *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier*, 19 FCC Rcd 16530, ¶ 21 (Wireline Comp. Bur. 2004) ("Although these are important issues, we decline to delay ruling on pending ETC petitions and to impose additional requirements at this time."); accord, *Virginia Cellular*, ¶ 31; *Highland Cellular*, ¶ 25.